

AMENDED IN SENATE APRIL 3, 2006

AMENDED IN SENATE MARCH 21, 2006

SENATE BILL

No. 1254

Introduced by Senator Ackerman
(Coauthor: Assembly Member Daucher)

February 8, 2006

An act to amend Section 511 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 1254, as amended, Ackerman. Employee-selected flexible work schedule.

Existing law, with certain exceptions, establishes 8 hours as a day's work and a 40-hour workweek, and requires payment of prescribed overtime compensation for additional hours worked. Existing law authorizes the adoption by $\frac{2}{3}$ of employees in a work unit of alternative workweek schedules providing for workdays no longer than 10 hours within a 40-hour workweek.

This bill would permit an individual nonexempt employee to request an employee-selected flexible work schedule providing for workdays up to 10 hours per day within a 40-hour workweek, and would allow an employer to implement this schedule without any obligation to pay overtime compensation. The bill would require the Division of Labor Standards Enforcement in the Department of Industrial Relations to enforce this provision and adopt regulations.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known and may be cited as the
2 Workplace Flexibility Act of 2006.

3 SEC. 2. The Legislature finds and declares all of the
4 following:

5 (a) Small businesses and their workers suffer from outdated
6 and inefficient workplace and overtime rules that do not allow
7 for sufficient flexibility for employers and workers to schedule
8 their hours of work for mutual benefit.

9 (b) California overtime laws, which are unique in the country,
10 make it difficult for most employers to reach an agreement with
11 an individual worker that would allow *for* a flexible work
12 schedule.

13 (c) Existing law does not permit an employer to allow an
14 individual worker to choose a flexible work schedule of four
15 10-hour days per week without overtime being paid.

16 (d) As a consequence, millions of California workers do not
17 have the opportunity to take advantage of a flexible work
18 schedule that would benefit the workers and their families.

19 (e) If workers were permitted to elect to work four 10-hour
20 days per week without the payment of overtime, it would allow
21 them to spend much-needed time with their families, it would
22 lessen traffic congestion on our crowded roads and highways,
23 and it would allow workers to spend one day a week on personal
24 matters, such as volunteering at a child's school, scheduling
25 medical appointments, and attending to other important family
26 matters that often are difficult to schedule with a
27 five-day-per-week, eight-hour-per-day schedule.

28 (f) It is the intent of the Legislature in enacting the Workplace
29 Flexibility Act of 2006 to protect workers as follows:

30 (1) A worker may not be forced to work more than eight hours
31 in a day without receiving overtime, but, instead, he or she may
32 request a flexible work schedule of up to four 10-hour days per
33 week and an employer may agree to this schedule without having
34 to pay overtime for the ninth and tenth hours worked per day in
35 that schedule.

36 (2) An employer will be required to pay overtime rates after
37 10 work hours in a day for workers who have chosen a flexible
38 schedule pursuant to this act.

1 (3) An employer will be required to pay double normal pay
2 after 12 work hours in a day for a worker who has chosen a
3 flexible schedule under this act.

4 (4) Any worker, including one who chooses a flexible
5 schedule under this act, will receive overtime for any hours
6 worked over 40 hours in a single week.

7 (g) Workplaces that are unionized already allow workers to
8 choose to work four 10-hour days; however, it is virtually
9 impossible for workers of nonunionized workplaces to enjoy this
10 benefit.

11 (h) No compelling public policy reason exists for this
12 discrepancy in the flexibility of work schedules between
13 unionized and nonunionized workers.

14 SEC. 3. Section 510 of the Labor Code is amended to read:

15 510. (a) Eight hours of labor constitutes a day's work. Any
16 work in excess of eight hours in one workday and any work in
17 excess of 40 hours in any one workweek and the first eight hours
18 worked on the seventh day of work in any one workweek shall be
19 compensated at the rate of no less than one and one-half times
20 the regular rate of pay for an employee. Any work in excess of
21 12 hours in one day shall be compensated at the rate of no less
22 than twice the regular rate of pay for an employee. In addition,
23 any work in excess of eight hours on any seventh day of a
24 workweek shall be compensated at the rate of no less than twice
25 the regular rate of pay of an employee. Nothing in this section
26 requires an employer to combine more than one rate of overtime
27 compensation in order to calculate the amount to be paid to an
28 employee for any hour of overtime work. The requirements of
29 this section do not apply to the payment of overtime
30 compensation to an employee working pursuant to any of the
31 following:

32 (1) An alternative workweek schedule adopted pursuant to
33 Section 511.

34 (2) An alternative workweek schedule adopted pursuant to a
35 collective bargaining agreement pursuant to Section 514.

36 (3) An alternative workweek schedule to which this chapter is
37 inapplicable pursuant to Section 554.

38 (4) An employee-selected flexible work schedule implemented
39 pursuant to Section 511.5.

1 (b) Time spent commuting to and from the first place at which
2 an employee's presence is required by the employer shall not be
3 considered to be a part of a day's work, when the employee
4 commutes in a vehicle that is owned, leased, or subsidized by the
5 employer and is used for the purpose of ridesharing, as defined in
6 Section 522 of the Vehicle Code.

7 (c) This section does not affect, change, or limit an employer's
8 liability under the workers' compensation law.

9 SEC. 4. Section 511.5 is added to the Labor Code, to read:

10 511.5. (a) Notwithstanding Section 511 or any other law or
11 order of the Industrial Welfare Commission, an individual
12 nonexempt employee may work up to 10 hours per workday
13 without any obligation on the part of the employer to pay an
14 overtime rate of compensation, except as provided in subdivision
15 (b), if the employee requests this schedule in writing and the
16 employer approves the request. This shall be referred to as an
17 overtime exemption for an employee-selected flexible work
18 schedule.

19 (b) If an employee-selected flexible work schedule is
20 implemented, the employer shall pay overtime at one and
21 one-half the employee's regular rate of pay for all hours worked
22 over 40 hours in a workweek or over 10 hours in a workday,
23 whichever is the greater number of hours. All work performed in
24 excess of 12 hours per workday and in excess of eight hours on a
25 fifth, sixth, or seventh day in the workweek shall be paid at
26 double the employee's regular rate of pay.

27 (c) An employer may inform its employees that it is willing to
28 consider an employee request to work an employee-selected
29 flexible work schedule, but shall not induce a request by
30 promising an employment benefit or threatening an employment
31 detriment.

32 (d) An employee or employer may discontinue the
33 employee-selected flexible work schedule at any time by giving
34 written notice to the other party. The request will be effective the
35 first day of the next pay period or the fifth day after notice is
36 given if there are fewer than five days before the start of the next
37 pay period, unless otherwise agreed to by the employer and the
38 employee.

39 (e) This section does not apply to any employee covered by a
40 valid collective bargaining agreement or employed by the state, a

1 city, county, city and county, district, municipality, or other
2 public, quasi-public, or municipal corporation, or any political
3 subdivision of this state.

4 (f) This section shall be liberally construed to accomplish its
5 purposes.

6 (g) (1) The Division of Labor Standards Enforcement shall
7 enforce this section and shall adopt or revise regulations in a
8 manner necessary to conform and implement this section.

9 (2) This section shall prevail over any inconsistent provisions
10 in any wage order of the Industrial Welfare Commission.

11 SEC. 5. The provisions of this act are severable. If any
12 provision of this act or its application is held invalid, that
13 invalidity shall not affect other provisions or applications that can
14 be given effect without the invalid provision or application.